

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HEIDI LING, as parent and natural guardian of)	Case No.
ROBERT LING, III, Individually and On)	
Behalf of All Others Similarly Situated,)	COMPLAINT – CLASS ACTION
Plaintiff,)	JURY DEMANDED
v.)	
MICROSOFT CORPORATION, a Washington)	
Corporation,)	
Defendant.)	

Plaintiff, Heidi Ling, as parent and natural guardian of Robert Ling III, by her undersigned attorneys, brings this civil action for damages and equitable relief on his behalf and all others similarly situated against the above-named Defendant and alleges as follows:

I. NATURE OF ACTION

1.1 Plaintiff brings this action as a proposed Class Action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased a Microsoft Xbox 360™ video game console ("Xbox 360™") in the United States of America.

1.2 This action asserts violations of the Washington Consumer Protection Act, Breach of Express Warranty, Breach of Implied Warranty, and Unjust Enrichment claims on behalf of the Classes for discs that were damaged by the Xbox 360™.

1 1.3 As a result of the Defendant's actions, the Plaintiff and the Class have suffered
2 economic damage.

3 1.4 Compact disc drive, or "CD," is defined herein to refer to all forms of CDs, such
4 as CD-ROM, CD-I and Video CD, as well as the Compact Disc-Digital Audio (CD-DA) format.

5 1.5 Digital video disc, or "DVD," is defined herein to refer to all forms of DVDs
6 including DVD-A, DVD-R, DVD-RW, DVD+R, DVD+RW and DVD-RAM.
7

8 **II. PARTIES**

9 2.1 Plaintiff, Heidi Ling ("Plaintiff") and her son, Robert Ling, III, have at all
10 material times been and are residents of Anaheim Hills, State of California, County of Orange.

11 2.2 Defendant, Microsoft Corporation ("Microsoft"), is a corporation incorporated in
12 the State of Washington, with headquarters in Redmond, State of Washington, County of King.
13

14 **III. JURISDICTION AND VENUE**

15 3.1 This Court has diversity subject matter jurisdiction over this class action pursuant
16 to the Class Action Fairness Act of 2005, which amends 28 U.S.C. § 1332 to add a new
17 subsection (d) conferring federal jurisdiction over class actions where, as here, "any member of a
18 class of plaintiffs is a citizen of a State different from any defendant" and the aggregated amount
19 in controversy exceeds \$5,000,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(2),
20 (6) (2006). This Court also has jurisdiction under 28 U.S.C. § 1332(d) because "one or more of
21 the members of the class is a citizen of a state within the United States and one or more of the
22 Defendants is a citizen or subject of a foreign state."
23

24 3.2 Subject matter jurisdiction is proper under 28 U.S.C. § 1332(a)(1) because the
25 Plaintiff and Defendant are citizens of different states and the amount in controversy exceeds
26 \$75,000.00. This court has supplemental jurisdiction over the state law claims pursuant to 28

1 U.S.C. § 1367.

2 3.3 Venue is proper in this judicial district because the Defendant maintains its
3 principal business office in this district. Additionally, pursuant to 28 U.S.C. § 1391(a) venue is
4 appropriate because the Defendant systematically and continuously sold its product within this
5 district and Defendant transacts business within this district.
6

7 **IV. CLASS ACTION ALLEGATIONS**

8 4.1 Plaintiff brings this suit as a class action pursuant to Rules 23(a), (b)(1), (b)(2)
9 and (b)(3) of the Federal Rules of Civil Procedure, on behalf of her son, Robert Ling, III and a
10 Plaintiff Class (the "Class") composed of all persons residing in the United States who, within
11 the four years preceding the filing of this complaint, purchased an Xbox 360™. Plaintiff further
12 brings this action on behalf of a Sub-Class comprised of all persons residing in the United States
13 who, within the four years preceding the filing of this complaint, owned a game disc, CD, or
14 DVD damaged by the Xbox 360™ ("Sub-Class"). Excluded from the Classes are officers and
15 directors of the Company, members of their immediate families and each of their legal
16 representatives, heirs, successors or assigns and any entity in which Microsoft has or has had a
17 controlling interest. Plaintiff reserves the right to modify these class definitions prior to moving
18 for class certification. Where applicable, the Class and the Sub-Class will be jointly referred to
19 as the "Classes."
20

21 4.2 This action has been brought and may be properly maintained as a class action
22 pursuant to Rule 23 of the Federal Rules of Civil Procedure for the following reasons:
23

24 a. The Class and Sub-Class are ascertainable and there is a well-defined
25 community of interest among the members of the Class and Sub-Class.

26 b. Membership in the Class and Sub-Class is so numerous as to make it

1 impractical to bring all members of the Class and Sub-Class before the Court. The identity and
2 exact number of members of the Class and Sub-Class is unknown but is estimated to be at least
3 in the thousands considering the fact that Microsoft has sold an estimated 13 to 15 million Xbox
4 360™ consoles as of June 2007.

5 c. Plaintiff's claims are typical of those of other members of the Class and
6 Sub-Class, all of whom have suffered harm due to Defendant's uniform course of conduct.

7 d. Plaintiff is a member of the Class and Sub-Class.

8 e. There are numerous and substantial questions of law and fact common to
9 all members of the Class and Sub-Class which control this litigation and predominate over any
10 individual issues pursuant to Rule 23(b)(3). The common issues include, but are not limited to,
11 the following:
12

13 i. Does the Washington Consumer Protection Act Apply?

14 ii. Were Defendant's representations, omissions and concealments
15 false, unfair and/or deceptive?
16

17 iii. Does the Xbox 360™ damage game discs?

18 iv. Were Plaintiff and the members of the Class and Sub-Class
19 damaged?
20

21 f. These and other questions of law and fact which are common to the
22 members of the Class and Sub-Class predominate over any questions affecting only individual
23 members of the Class and Sub-Class.

24 g. Plaintiff will fairly and adequately protect the interests of the Class and
25 Sub-Class in that Plaintiff has no interests that are antagonistic to other members of the Class and
26 Sub-Class, and has retained counsel competent in the prosecution of class actions to represent

1 himself, the Class and Sub-Class.

2 h. Without a class action, the Class and Sub-Class will continue to suffer
3 damage, Defendant's violations of the law or laws will continue without remedy, and Defendant
4 will continue to enjoy the fruits and proceeds of its unlawful conduct.

5 i. Given (i) the substantive complexity of this litigation; (ii) the size of
6 individual Class and Sub-Class members' claims; and (iii) the limited resources of the Class and
7 Sub-Class members, few, if any, Class and Sub-Class members could afford to seek legal redress
8 individually for the wrongs Defendant has committed against them.

9 j. This action will foster an orderly and expeditious administration of Class
10 and Sub-Class claims, economies of time, effort and expense, and uniformity of decision.

11 k. Inferences and presumptions of materiality and reliance are available to
12 obtain class-wide determinations of those elements within the Class and Sub-Class claims, as are
13 accepted methodologies for class-wide proof of damages; alternatively, upon adjudication of
14 Defendant's common liability, the Court can efficiently determine the claims of the individual
15 Class and Sub-Class members.

16 l. This action presents no difficulty that would impede the Court's
17 management of it as a class action, and a class action is the best and/or the only available means
18 by which members of the Class and Sub-Class can seek legal redress for the harm caused by
19 Defendant.

20 m. In the absence of a class action, Defendant would be unjustly enriched
21 because it would be able to retain the benefits and fruits of its wrongful conduct.

22 4.3 The Claims in this case are also properly certifiable under applicable law.
23
24
25
26

V. STATEMENT OF FACTS

5.1 The Xbox 360™ Console is the second generation of Microsoft's video game system.

5.2 The Xbox 360™ is designed, manufactured, marketed, and distributed by Microsoft.

5.3 The Xbox 360™ is marketed as a state of the art gaming system that can play hundreds of game titles as well as movie discs.

5.4 The games are generally purchased separately from the Xbox 360™, and are contained on a CD-Rom or DVD-Rom format disc. These discs are required to be inserted into the Xbox 360™ in order to play.

5.5 The Xbox 360™ frequently scratches the discs rendering them unusable by the consumer.

5.6 On or about November, 2006, Robert Ling, III purchased an Xbox 360™. Contemporaneous with that purchase, and on multiple occasions thereafter, Plaintiff purchased discs to be played in the Xbox 360™, including a game disc entitled "Guitar Hero II." Some of the games were published by Microsoft, while other games, including "Guitar Hero II," were published by third parties pursuant to licensing agreements with Microsoft.

5.8 Mr. Ling played "Guitar Hero II" several times without incident. Thereafter, on one occasion, Mr. Ling properly inserted the game disc into the console, but the game would not play and a message was displayed that the disc was unreadable and unplayable. Mr. Ling removed the disc and discovered circular scratches that were not present when he inserted the game into the Xbox 360™. The scratches occurred when the laser mechanism of the drive came in contact with the surface of the spinning game disc. Mr. Ling contacted the Defendant and

1 requested that the Defendant repair his console and repair or replace his disc. In response, the
 2 Defendant's customer service representative told Mr. Ling that Microsoft would not replace the
 3 disc because it was manufactured by a licensed third party, Red Octane. Defendant's customer
 4 service representative also told Mr. Ling to observe the console to see if it happens again.

5 5.9 The scratched disc has been rendered useless.

6 5.10 The scratched disc issue is a widespread problem for consumers of the Xbox
 7 360™. (see Exhibit "A" attached).

8 5.11 Microsoft developed a scratched disc Replacement Program in response to
 9 consumer complaints about the issue. The policy allows consumers who have experienced
 10 scratched game discs to get a one time replacement disc per game title if they return the disc and
 11 pay a twenty dollar (\$20) fee. The program is limited to ten (10) games published by Microsoft,
 12 and does not cover the majority of games available for the Xbox 360™.

13 5.12 As of the date of this complaint, Microsoft has not released any form of repair or
 14 replacement procedure for the Xbox 360s™, which are the source and cause of the scratched
 15 discs.

16 VI. CAUSES OF ACTION

17 A. Violation of Consumer Protection Act (RCW 19.86)

18 6.1 Plaintiff incorporates by reference all the above allegations as if fully set forth
 19 herein.

20 6.2 This cause of action is asserted on behalf of Plaintiff and each of the Classes.

21 6.3 The Washington Consumer Protection Act ("CPA"), RCW 19.86 *et seq.*, provides
 22 consumers with a comprehensive procedure for redressing the violations of applicable law by the
 23 Defendant.
 24
 25
 26

1 6.4 RCW 19.86.090 provides a private right of action to any person injured in his
2 property by an "unfair or deceptive act or practice."

3 6.5 Defendant advertises the Xbox 360™ as an "Unsurpassed Gaming and
4 Entertainment Experience" and alleges that it is capable of playing hundreds of compatible game
5 discs. Defendant fails to disclose, however, that the Xbox 360™ will scratch discs during
6 normal use rendering them unusable.

7
8 6.6 Defendant's sale of an Xbox 360™ with a propensity to damage discs, its failure
9 to disclose the defect in the product, and its failure to reimburse consumers for the damage to
10 discs caused by the product constitute acts which are unfair and/or deceptive within the meaning
11 of the statute.

12 6.7 Defendant has designed and is marketing an unfair and deceptive Disc
13 Replacement Program in that Defendant charges the consumer an additional \$20 for the
14 replacement of a disc which Defendants knows was damaged as a result of Defendant's defective
15 product. Defendant has thus wrongly developed a program by which Defendant manipulates the
16 consumer so as to gain further profit as a result of the defect in their product and which they
17 failed to disclose to the consumer.

18
19 6.8 As a result of Defendant's false and deceptive trade practices in violation of the
20 CPA, Plaintiff and the members of the Classes have been damaged in an amount which is
21 presently undetermined. Pursuant to RCW 19.86.090, Plaintiff seeks treble damages on behalf
22 of herself and each class member for their actual damages sustained as a result of Defendant's
23 unfair and deceptive acts in an amount to be determined at trial.

24
25 **B. Breach of Express Warranty**

26 6.9 Plaintiff incorporates by reference all the above allegations as if fully set forth

1 herein.

2 6.10 This cause of action is asserted on behalf of Plaintiff and the Classes.

3 6.11 Plaintiff and members of the Classes have entered into contracts with Defendant
4 by way of the purchase of the Xbox 360™.

5 6.12 The purchase provided for a warranty on the Xbox 360™ by the Defendant to
6 guarantee against any manufacturing or design defects which render the Xbox 360™ unplayable
7 or the discs unreadable.

8 6.13 Attached hereto is the version of the Xbox 360™ warranty as provided on
9 Defendant's website as of the date of the filing of this complaint. (*See* Exhibit "B" attached).
10 Plaintiff is informed and believes that the warranty has been changed with regards to the length
11 of time of coverage and/or other changes presently unknown subsequent to the Plaintiff's
12 purchase of the Xbox 360™.
13

14 6.14 During the time in which the Xbox 360s™ were covered under the warranty,
15 Plaintiff and the Class members had a right to expect that Defendant would act fairly and in good
16 faith with respect to Plaintiff and the members of the Classes. During such time, Defendant had
17 exclusive control over:
18

19 a. whether or not to repair or replace Xbox 360s™ which damaged discs;

20 b. whether or not to repair or replace discs damaged by the Xbox 360™.
21

22 6.15 As a result of the Defendant's failure to repair the Xbox 360s™, and/or repair or
23 replace discs damaged by the Xbox 360™, Plaintiff and members of the Class have been
24 damaged in an amount which is presently undetermined.

25 **C. Breach of Implied Warranty**

26 6.16 Plaintiff incorporates by reference all the above allegations as if fully set forth

1 herein.

2 6.17 This cause of action is asserted on behalf of Plaintiff and the Classes.

3 6.18 At the time Defendant designed, marketed, sold, and distributed the Xbox 360™
4 for use by Consumers such as Plaintiff, Defendant knew of the use for which the Xbox 360™
5 was intended, and impliedly warranted the products to be of merchantable quality and safe and
6 fit for such use.

7
8 6.19 Plaintiff reasonably relied upon the skill and judgment of Defendant as to whether
9 the Xbox 360™ was of merchantable quality and safe and fit for his intended use.

10 6.20 Contrary to such implied warranty, the Xbox 360™ was not of merchantable
11 quality or safe or fit for its intended use, because it was unfit for the ordinary purposes for which
12 it was used as described above.

13
14 6.21 As the direct and proximate result of the breach of implied warranties, Plaintiff
15 has suffered, and may continue to suffer, injuries, harm, and economic loss.

16 **D. Unjust Enrichment**

17 6.22 Plaintiff incorporates by reference all the above allegations as if fully set forth
18 herein.

19 6.23 This cause of action is asserted on behalf of Plaintiff and each of the Classes.

20 6.24 Defendant has benefited and been unjustly enriched by the above-alleged conduct.

21 6.25 Defendant has knowledge of this benefit, and has voluntarily accepted and
22 retained this benefit.

23
24 6.26 The circumstances as described herein are such that it would be inequitable for
25 Defendant to retain these ill-gotten benefits without paying the value thereof to Plaintiff and the
26 members of the Classes, or through other disgorgement.

1 6.27 Plaintiff and the Classes are entitled to the amount of Defendant's ill-gotten gains,
2 including interest, resulting from its unlawful, unjust and inequitable conduct as described above.

3 6.28 Plaintiff seeks an order of disgorgement of profits into a fluid recovery fund.

4 **VII. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff, on behalf of her minor son, Robert Ling, III, and the members
6 of the proposed Class and Sub-Class, prays for the following relief:
7

8 A. An Order certifying this action as a class action, certifying the Class and Sub-
9 Class, designating Plaintiff as the Representative of the Class and Sub-Class, and appointing
10 Plaintiff's counsel as counsel to the Class and Sub-Class;

11 B. Award to Plaintiff and each member of the Class and Sub-Class appropriate
12 compensatory and restitutionary damages, including for discs damaged by the Xbox 360™ and
13 for pre-judgment interest at the statutory rate;
14

15 C. A temporary restraining order, a preliminary injunction and a permanent
16 injunction requiring Defendant, and their agents, servants, employees and all persons acting
17 under or in concert with them, to issue a warning to members of the Plaintiff Class that the Xbox
18 360™ is not fit for its intended purpose, and to cease and desist from the following acts:

19 i. Selling, marketing or advertising the Xbox 360™ without a detailed and
20 appropriate warning of the product's propensity to cause scratching of discs;

21 ii. Charging consumers any sum for the replacement of a game disc damaged
22 by the Xbox 360™ during normal and intended use;

23 iii. Refusing to fix, repair or correct the Xbox 360™ at Defendant's cost so as
24 to prevent the Xbox 360™ from scratching discs; and
25

26 iv. Any other conduct which the Court determines is warranted so as to

1 prevent the commission of unfair and/or deceptive acts or practices by Defendant as set forth in
2 this Complaint, and requiring Defendant to account for and disgorge all of its unjust enrichment
3 on a nationwide basis from the practices described herein, plus the earnings thereupon;

4 E. Award Plaintiff and members of the Plaintiff Class and Sub-Class the costs of suit
5 and attorney's fees; and
6

7 F. Award all other relief to which Plaintiff and Class and Sub-Class members may
8 be entitled by law or in equity.

9 **VIII. DEMAND FOR JURY TRIAL**

10 Plaintiff demands a trial by jury of all issues so triable.

11 DATED: August 14, 2007

12 By: s/ Amy Williams-Derry

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EXHIBIT "A":



EXHIBIT "B":**Product Warranty: Xbox 360 Video Game and Entertainment System**

PLEASE READ THIS LIMITED WARRANTY CAREFULLY TO UNDERSTAND YOUR RIGHTS AND OBLIGATIONS!

YOU MUST ACCEPT THE TERMS AND CONDITIONS OF THE LIMITED WARRANTY, INCLUDING THE SOFTWARE LICENSE IN SECTION G BELOW, TO USE YOUR XBOX 360. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, DO NOT SET UP OR USE YOUR XBOX 360; INSTEAD, RETURN IT TO MICROSOFT FOR A REFUND OF THE PRICE YOU PAID, TAX AND SHIPPING CHARGES.

LIMITED WARRANTY

The term "Xbox Product" means, depending on the context below, either: (i) the Microsoft Xbox 360™ Video Game System console including (when considered as a whole) the Microsoft software stored on the separate Xbox 360 hard disc and/or embedded in microprocessors within the Xbox 360 console ("Console"), or (ii) Microsoft branded Xbox 360-compatible hardware accessories manufactured by or for Microsoft, whether included with the Console or purchased separately ("Accessories"). The term "Warranty Period" means: (i) as applied to the Console, a period of one year (three years for conditions that cause three lights on the ring of light on the front of the Console to flash red) starting as of the date of your sales receipt for the purchase of the Console, or (ii) as applied to an Accessory, a period of 90 days starting as of the date of your sales receipt for the purchase of the Accessory (unless a separate written express warranty is packaged with the particular Accessory).

A. WARRANTIES

- **One Year Express Warranty on Console (Three Years for Three Lights Flashing Red).** Subject to the terms and conditions of this Limited Warranty, Microsoft warrants to you only (the original retail purchaser) that, during the Warranty Period and under normal use and service, the Xbox® Console will substantially conform with the printed user instruction materials packaged with the Console.
- **90 Day Express Warranty on Accessories.** Subject to the terms and conditions of this Limited Warranty, Microsoft warrants to you only (the original retail purchaser) that, during the Warranty Period and under normal use and service, the Accessory will substantially conform with the printed user instruction materials packaged with the Console or Accessory (unless a separate written express warranty is packaged with the particular Accessory).
- **Implied Warranty.** You may also have an implied warranty and/or condition under the laws of some jurisdictions, which is hereby limited to the duration of the Warranty Period. Some jurisdictions do not allow limitations on how long an implied warranty or condition lasts, so the foregoing limitation may not apply to you.

As to any defects discovered after the Warranty Period, there is no warranty or condition of any kind.

B. OBTAINING WARRANTY SERVICE

To receive instructions for obtaining repair or replacement warranty services you must call: Within the U.S., U.S. Territories and Canada: 1-800-4MY-XBOX (1-800-469-9269); TTY users: 1-866-740-XBOX (1-866-740-9269).

You must also:

1. Submit proof of purchase in the form of a bona fide, dated bill of sale, receipt, or invoice (or a copy) evidencing that your request for service is made within the Warranty Period.
2. Follow Microsoft's shipping and other instructions if it determines that all or part of your Xbox Product requires return for repair or replacement. To obtain the warranty service, you must take or deliver the Xbox Product in suitable packaging that provides an adequate degree of protection against damage during transit, to the location specified by Microsoft. Except as otherwise required by legislation in your jurisdiction, costs associated with transport (including packaging) for warranty service shall be at your expense.
3. Delete or remove any files or data you consider private or confidential before sending the Xbox Product to Microsoft. Copy and keep any files or data stored on the Xbox Product that you don't want to lose.

Failure to follow the above instructions may result in delays, cause you to incur additional charges, or void your warranty.

C. EXCLUSIVE REMEDY

During the Warranty Period and subject to applicable law, Microsoft will, at its option and as your exclusive remedy for breach of this Limited Warranty or any implied warranties:

- Repair or replace a defective Xbox Product, or
- Following return of your Xbox Product, make payment to you for the allowable damages that you incur in reasonable reliance but only up to the amount of the purchase price that you paid for your Xbox Product. This refund may include a deduction for depreciation based on your actual use.
- Any replacement parts or Xbox Product will be new or refurbished or serviceably used, comparable in function and performance to the original part or Xbox Product and warranted for the remainder of the original Warranty Period or 30 days from the date of shipment of the Xbox Product back to you, whichever is longer.
- **YOU AGREE THAT MICROSOFT IS NOT LIABLE TO YOU FOR ANY LOSS OF YOUR DATA RESULTING FROM MICROSOFT'S REPAIR OR REPLACEMENT OF YOUR XBOX PRODUCT.**
- After the Warranty Period has expired, Microsoft may charge you a fee for its efforts to diagnose and service any Xbox Product-related problems.
- Microsoft will use commercially reasonable efforts to diagnose and attempt to correct, or suggest solutions for, Xbox Product defects that are covered by this Limited Warranty.

MICROSOFT DOES NOT PROVIDE ANY WARRANTIES REGARDING ITS WARRANTY SERVICES AND, EXCEPT FOR THE PRECEDING SENTENCE, DISCLAIMS ALL DUTIES (IF ANY) OF WORKMANLIKE EFFORT OR OF REASONABLE CARE.

D. NO OTHER WARRANTIES

The express warranty stated in Section A above is the only express warranty made to you and is provided in lieu of all other express or implied warranties and conditions (if any) including any created by any other

statements, documentation or packaging. No other warranties or conditions are made with respect to the Xbox Product or the warranty services by any person, including but not limited to Microsoft and its suppliers.

No other information (oral or written) or suggestions given by Microsoft, its agents or suppliers or its or their employees, shall create a warranty or condition or expand the scope of this Limited Warranty. Also, there is no warranty or condition of title, quiet enjoyment, or non-infringement in the Xbox Product. You may have greater rights existing under legislation in your jurisdiction. Where any term of this Limited Warranty is prohibited by such laws, it shall be null and void, but the remainder of the Limited Warranty shall remain in full force and effect.

E. EXCLUSIONS FROM LIMITED WARRANTY

This Limited Warranty shall not apply and Microsoft has no liability under this Limited Warranty if the Xbox Product:

- is used with products not sold or licensed by Microsoft (including, but not limited to, non-licensed games and game enhancement devices, adaptors and power supply sources) or which are otherwise incompatible;
- is used for commercial purposes (including rental or lease);
- is modified or tampered with;
- is damaged by Acts of God, power surge, misuse, abuse, negligence, accident, wear and tear, mishandling, misapplication, or other causes unrelated to defective materials or workmanship;
- serial number is defaced, altered or removed;
- is damaged by programs, data, viruses, or files, or during shipments;
- is not used in accordance with the printed user instruction materials packaged with the Xbox Product; or
- is repaired, modified or altered by other than Microsoft authorized repair centers.

This Limited Warranty does not cover your data, any separate software or Xbox games whether or not packaged or included with the Xbox Product, or any accessories or peripheral devices that are not manufactured by or for Microsoft.

F. EXCLUSION OF CONSEQUENTIAL, INCIDENTAL AND CERTAIN OTHER DAMAGES and LIMITATION OF LIABILITY

TO THE FULL EXTENT ALLOWED BY LAW, MICROSOFT IS NOT LIABLE FOR ANY:

- (i) CONSEQUENTIAL OR INCIDENTAL DAMAGES;
- (ii) DAMAGES OR LOSS OF ANY NATURE WHATSOEVER RELATING TO LOST PROFITS, LOSS OF DATA OR PRIVACY OR CONFIDENTIALITY, ANY INABILITY TO USE ALL OR PART OF THE XBOX PRODUCT, PERSONAL INJURY, OR ANY FAILURE TO MEET ANY DUTY (INCLUDING BUT NOT LIMITED TO ANY DUTY OF REASONABLE CARE OR OF WORKMANLIKE EFFORT); OR
- (iii) INDIRECT, SPECIAL, OR PUNITIVE DAMAGES ARISING OUT OF RELATING IN ANY WAY TO THE XBOX PRODUCT. THE FOREGOING APPLIES EVEN IF MICROSOFT OR ANY SUPPLIER OR AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES; EVEN IN THE EVENT OF FAULT, TORT

(INCLUDING NEGLIGENCE), STRICT OR PRODUCT LIABILITY, MISREPRESENTATION OR OTHER REASON; AND EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. Some jurisdictions do not allow the exclusion or limitation of such damages, so the above limitations or exclusions may not apply to you.

G. ADDITIONAL CONDITIONS

- The software included in the Xbox Product is licensed to you, not sold. You are licensed to use such software only in your Xbox Product and you may not reverse engineer it, except as expressly permitted by applicable law notwithstanding this limitation.
- Your Xbox Product and its internal components are new pursuant to industry standards, unless otherwise indicated on the Xbox Product retail packaging as "Refurbished."
- You agree to comply with all applicable export laws and regulations if you export the Xbox Product outside of the United States or Canada.
- This Limited Warranty applies to the original retail purchaser only and may not be assigned or transferred. However, some jurisdictions extend the protection of implied warranties to subsequent consumers and therefore this limitation may not apply to you.
- Attempting to defeat or circumvent the Xbox Product security or anti-piracy protection system may cause your Xbox Product to stop working permanently. It will also void your Limited Warranty, and may make your Xbox Product ineligible for authorized repair, even for a fee.

H. GOVERNING LAW

This Limited Warranty is valid only in the United States of America and Canada. If you acquired the Xbox Product in the United States, the laws of the State of Washington, U.S.A., will apply to this Limited Warranty. The laws of your state of residence will apply to any tort claims and/or any claims under any consumer protection statutes.

If you acquired the Xbox Product in Canada, except where expressly prohibited by local law, the laws in force in the Province of Ontario, Canada, will apply.

I. QUESTIONS?

Within the U.S. and U.S. Territories, please see www.xbox.com or call the Xbox Customer Support number: 1-800-4MY-XBOX (1-800-469-9269); TTY users: 1-866-740-XBOX (1-866-740-9269).

This Limited Warranty gives you specific legal rights, and you may also have other rights which vary from jurisdiction to jurisdiction.